Islamic Shari‘ah and the Question of Minorities

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Policy Perspectives , Volume 6 , Number 1, January - June 2009

Abstract

[Minorities are defined on different bases by different countries and societies, e.g. ethnic, religious or linguistic. In Muslim societies, the basis is primarily religious belief. A minority is not always oppressed and may sometimes be ruling over the majority. At times, a minority may be large enough to deserve further rights than those due to a small minority. These situations are not adequately covered in contemporary international law. Muslim scholars have classified non-Muslims living in Islamic societies into two categories: mu‘ahidin (those entering into a contract with the Muslim state) and ahl al-dhimma (protected or guaranteed citizens). The second category, being the result of Muslim conquest, a phenomenon of the past, no longer exists. Historically, such minorities have been treated very well in Muslim societies, having the same rights as Muslims in civil matters; in some cases, they even enjoyed a better status than the Muslims. Non-Muslims in Pakistan too have constitutionally guaranteed rights. Muslim minorities in non-Muslims societies do not always enjoy fair protection of their Islamic identity. Many unnecessary issues arise because of the misunderstanding that Muslim individuals living in non-Muslim societies are required to implement the same laws as Muslim states. - Ed.]

Introduction

This article is divided into four parts. The first part defines the concept of minority and outlines the need to discuss the rights, privileges and status of minorities. The second part describes the position of Islam on minorities or, more accurately, the position of Islam on issues now considered relevant to minorities. Part three looks at the situation of Muslim minorities in non-Muslim countries. Finally, the fourth part makes a brief reference to the status and position of minorities in Pakistan in particular and in the contemporary Muslim world in general.

(I)

What is the definition of a minority? Linguistically, any community that is distinct from the majority of the people living in a territory is a minority. However, in a discussion of the jurisprudence, constitution, or rights and privileges of minorities, a further elaboration is necessary: in what way does a community need to be distinct to be considered a minority? For example, a society may include a small group of bearded people among mostly clean-shaven people, or vice versa, but such differences do not qualify the group to be considered a minority. Therefore, for the purposes of the discussion in this paper, the meaning assigned to the term ‘minority' by English lexicographers or linguists is not sufficient.

Importantly, even more fundamental sociological or political distinctions may not provide a valid basis for considering a group a minority: a group may be a political or sociological minority and yet not require a different set of rights and privileges or jurisprudence. This is partly because a minority in the political sense may not be - and normally is not - a permanent minority. Today's political minority may become tomorrow's majority, and such a temporary minority would not usually have to define and decide on its status and privileges as a minority, or settle questions of inter-communal relationship.

It is only in the limited context of international law that we find the definition of a minority that is

relevant to a discussion of its rights and privileges. In this context, a minority may be defined as a group of people that differs from the dominant group within the state in matters essential to the formation and constitution of the state. In this sense, a majority is normally a permanent majority and a minority is mostly a permanent minority. The rights and privileges of such permanent minorities have become an important component of modern international law,[1] and it is with respect to these that this paper attempts to outline rights and privileges under international jurisprudence and Islamic law.

The above working definition of minorities raises a basic question: what is essential to the formation of a state or for the constitution and formation of societies?

A society may be ethnic, giving primary significance to the ethnicity of its individuals and citizens. In such societies, the majority and minority would be determined on the basis of ethnicity. In South Africa's apartheid days, it was mostly, if not exclusively, the ethnicity of a person that decided whether he was to be treated as a minority or a majority member. On the other hand, in many countries in Europe, the Muslim world and many other parts of the world, different ethnic groups live together without anybody taking much notice of the ethnic background of a person. In fact, in all major Muslim and European countries, millions of people belonging to different ethnic backgrounds are living together without creating any apparent problem. There has been no significant difference of perceptions about the future status and the privileges of these groups. In most Muslim societies, difference in ethnicity or ethnic background has hardly ever led to any dispute involving minority or majority issues.

In other societies, linguistic difference provides one of the most important bases for distinguishing a majority from a minority. In others, the cultural affinity or otherwise of a people with each other labels them a minority or a majority.

In many Western countries, it is the cultural background, coupled with other factors, which mostly decides who is a majority and who a minority.

In most Muslim societies of the past, it was primarily the religious belief of a person that decided whether he belonged to the majority or to a minority. This remains true of Muslim countries even today. This is because society and state in Islam mainly draw their validity and legitimacy from their affiliation to Islam, which is primarily a religious message. Muslims seek guidance from the Qur'an, essentially a religious book which has come down to humanity through a religious source, namely, divine revelation. Therefore, the religious affiliation and religiousness of a person become as strong, important and relevant as, for example, ethnicity in Apartheid South Africa, or cultural affinity in some Western countries, or linguistic affiliation in some other countries.

The precise definition of majority and minority may, therefore, differ from country to country and from society to society. In Pakistan, around 97 percent of the population is Muslim. This group includes people from diverse ethnic backgrounds: many are descended from immigrants who came over centuries from Arabia, Iran and Central Asia; these live side by side with Muslim descendants of the local people who converted from Hinduism. In the distant past, large groups of people also migrated from Eastern Europe to the sub-continent. Many of these groups still retain their ethnic identities and references. Yet, they are never referred to as belonging to a minority or a majority. This example should substantiate and support the submission that the question of the basis of majority and minority should be decided differently in different contexts.

This, to some extent, has now been acknowledged in the relevant documents of the United Nations. These documents in particular, and the works of contemporary publicists on international law in general, have referred to the rights and privileges of a minority against the predominance of a hostile

or unfriendly majority. Although these documents have seldom attempted to formally and exclusively define a minority in legal and constitutional terms, the manner in which they have dealt with issues, and the tendency they have shown in protecting the rights and privileges of minorities has, to a large extent, clarified the underlying concept.

In this context, we may refer to the documents related to human rights adopted by different bodies of the United Nations, documents dealing with the elimination of discrimination on different grounds, elimination and prohibition of genocide, and other similar subjects. In all these documents, a reference to a minority normally includes a minority ethnically, rationally or religiously distinct from the majority of its area. In the UN Convention of Civil and Political Rights, Article 27 is relevant and important. It quite elaborately defines a minority, and confines it to ethnic, religious and linguistic groups. Thus, it comes closer to the views of Muslim jurists, who give more weight to the religious beliefs of individuals in this matter.

Despite their precision and the clarity of ideas in the minds of their authors, however, these documents have failed to discuss the situation where a minority, far from needing protection in a society, might in fact be ruling it, in which case the interests of the majority might be more at risk. There have been such situations in the past, as there are now. The most conspicuous and obvious example is that of South Africa, where four million white people ruled over 32 million black people, as well as perhaps 2-3 million others, for more than three centuries. One should not ignore or downplay the question whether the documents dealing with the rights of minorities are applicable to persecuted majorities in contexts similar to South Africa. There are countries in Africa, and may be elsewhere, where different kinds of minorities are ruling over the majorities. However, the above-mentioned literature is silent on this issue, or appears to be practically irrelevant to the persecuted millions constituting majorities. This issue is an important lacuna and a significant oversight on the part of the framers of such documents.

Another weakness - one might call it another loop-hole - in the current documents on the rights of minorities pertains to how small a minority needs to be to qualify for the protection envisaged. Many feel that these documents contemplate only the situation where a minority is so small and has such limited resources that affirmative action, external moral and legal support, is required to protect it and its rights and privileges; their provisions and references are ineffective and inadequate for the situation where a group, while being a numerical and comparative minority, is sizeable enough to be bigger than the population of dozens of countries put together. This is felt by many Muslims in the subcontinent. The number of Muslims in India, according to various estimations, is 150 million to 250 million. As such a colossal minority, their expectations and interests may not be fully addressed in the reference made in different documents to minorities. Indeed, Indian Muslims are almost a separate and distinct nation in the sense that the term has been used in international discourses and documents. Nevertheless, they are citizens of a country where the predominant population is different from them, not only in terms of ethnicity and, in many cases, language, but also in basic religious beliefs. This is an important aspect of the contemporary discussions on minorities.

Issues about minorities may be taken up at two different levels: the national and the international. A national minority may be defined as a group of citizens who constitute a minority and whose rights and privileges are protected, or at least supposed to have been protected, by the domestic law of their country. An international minority would be a group or community whose rights and privileges are to be guaranteed through international instruments. Undoubtedly, there are, or might be in future, areas that need to be protected by international instruments framed by international bodies under international law. Yet there remain a lot of other problems and issues to be dealt with by the national documents and domestic legislation. The resolution of possible conflict between the requirements of these two kinds of documents is an important issue that has agitated the minds and engaged the attention of scholars and jurists.

Interestingly, Muslim scholars have addressed the question of minorities and other relevant issues on both levels: the level of municipal legislation, dealing with the rights of the other group, as well as the level of the international law of Islam (Siyar), which deals with the rights and privileges or non-

Muslims living in the Islamic State.[2]

(II)

Before taking up the Muslim point of view on the question of minorities, pluralism, as understood, formulated and practised in the history of Islam, needs to be understood. The Islamic legal system, as domestically enforced and as followed by Muslim rulers for their international dealings for more than one thousand years, was a pluralistic system. It successfully accommodated different and conflicting views, varying cultures and people of different backgrounds under one system that equally addressed the needs and requirements of these different groups.

Sometimes, non-Muslim observers from outside the Muslim world find it difficult to understand the Islamic position and to distinguish Islam as a religion and a set of moral principles from Islam as a social code, Islam as a legal system, Islam as a cultural paradigm and Islam as a civilization. These are different levels of implementation of, and manifestations of adherence to, the Islamic guidance and the law of the Shariah. There is an in-built balance in the requirements of these levels and manifestations: a harmony has, by and large, been maintained in order to keep balance between the push and pull of these different requirements.

The Islamic pluralism, if the term can be used, has been developed by Muslim jurists directly under the guidance of the Qur'an and on the basis of the model example established by the Prophet of Islam (PBUH). The Qur'an does not address a particular ethnic or linguistic group of people or a particular tribe or society. It addresses itself either to mankind at large - the Children of Adam - or to specific people with reference to their religious beliefs. There is no address in the Qur'an to any groups of people invoking their ethnic or linguistic, color or any other affiliation. This highlights the Qur'an's emphasis on the unity of mankind and, at the same time, acknowledges that distinctions can only be made between people on the basis of matters that they choose through their own free and conscious decision-making, specifically, ideology or religious belief. Ethnicity, linguistic difference and race are not chosen by a person through any conscious or free choice; they are only accidental or dictates of nature, and therefore individuals should not be discriminated on this basis.

The religious pluralism as reflected in Qur'anic references can be reviewed from two perspectives: the theoretical reference made in the Qur'an, and the historical practice of Muslim societies. The Qur'an invites the "People of the Book" (the children of Israel and Christians) particularly to come to the common ground for all divine religions and thereby advance their common cause and serve humanity. This Qur'anic call provides the ultimate basis for a lasting religious pluralism.

The performance of Muslim rulers in different ages of history, despite many failings in other areas, has been exemplary as far as treatment of non-Muslim co-citizens is concerned. It is acknowledged by Jewish historians and Western scholars that the best periods of Jewish history, after the fall of their kingdom, was when they lived in Muslim lands. In Muslim Spain, they enjoyed all the freedom, respect and dignity that should be available to every human being. The status given to non-Muslims by the Abbasids, and the status given to the Hindus by the Moguls and other Muslim monarchs before them provide examples of the nature of treatment historically meted out to non-Muslims by Muslim societies.

It may be pointed here that the term "minority" was never used by Muslim jurists before the twentieth century. There is hardly any explanation as to why this term has not been used in the formidable plethora of material on fiqh. It is not found in historical or legal literature. It is not found in literature produced by Muslim theologians and writers on political thought. However, the rights and privileges of non-Muslims living in an Islamic society are dealt with in elaborate detail, and with a fuller discussion as one expects from the width and profundity of their work. This is perhaps because, to the Muslim mind, it is not the numbers of people but their humanity and human quality that are significant. Every person with whom one is dealing is a human being; his dignity should be protected and he should be respected as a human being irrespective of the numbers he represents. Being similar to the larger

number of people does not add to his human quality, nor does being dissimilar reduce it.

This primacy of humanity is supported by the example of the Prophet of Islam (PBUH) in his treatment of non-Muslims in Madina. Once, the Prophet (PBUH) saw that the body of a Jew, who had been his enemy, was being carried by his people to the graveyard. He immediately stood up in reverence to the body, paying homage and respect to a human being. Somebody reminded the Prophet (PBUH) confidentially and secretly that this was the body of such-and-such Jew (i.e. an enemy). But the Prophet (PBUH) responded, with a raised voice, "Alaisat-nafsan?"-"Is it not a human soul?"[3] He clearly indicated that a person deserves respect and enjoys rights as a human being, irrespective of his or her religion, creed, culture, or ethnicity.

Whatever has been done by the Prophet (PBUH) or his immediate successors or Companions as a whole is part of the shari'a and hence a source of Islamic Law. The conduct of the Prophet (PBUH) and his Companions with respect to non-Muslims living in the Islamic realm became important sources of law and have been the basis on which the private International law of Islam was developed.

There have been non-Muslims living in Muslim societies from the very beginning. Indeed, there is no period in Islamic history in which non-Muslims have not lived alongside Muslim majorities as co-citizens. Muslim scholars have classified them into two categories:

(i) Mu'ahidin, or parties to a contract; and

(ii) Ahl al-dhimma, protected or guaranteed citizens.

The first term, mu'ahidin, referred to those non-Muslim citizens of the Islamic state who had entered into a special contract or treaty with the Muslim government. It was on the basis of this treaty or contract that they had accepted the citizenship of the Islamic state. For example, when the Prophet (PBUH) migrated to Madina at the invitation of the city's new Muslims and established a city-state in Madina, he entered into an understanding with the Jews of Madina. A document was chalked out in consultation with the local chiefs in which the rights and privileges of all the tribal groups, the Jews, the local inhabitants of Madina and the migrants from Makka were laid down. This charter has been considered by some contemporary scholars to be the first written constitution in the history of mankind.[4] This document has come down to us and is available in English, French, German, Urdu and Turkish translation.

Mu'ahidin, then, are the groups of non-Muslims whose rights and privileges are determined in the light of the agreement and contract entered with them, in addition to the rights and privileges given by the Qur'an or by the Prophet of Islam (PBUH). We can say that the present non-Muslim populations found in almost all major Muslim countries, including Egypt, Iraq, Syria, and others, fall under this category. Their rights and privileges are determined in the light of the dictates of the Qur'an and Sunnah as well as the provisions of the contract, treaty or agreement entered between their communities and the respective Muslim government. This arrangement is reflected in the constitutions of these countries, the statements and pronouncements made by their respective leaders, and other relevant documents.

The second category of non-Muslim co-citizens has sometimes been misunderstood by superficial readers, and at times misinterpreted by writers. This includes those non-Muslims who become citizens of an Islamic state as a result of their defeat in a war and the resultant Muslim conquest. This category existed only in the past. Presently, there is no area or territory that has been annexed to any contemporary Islamic state as a result of defeat of the non-Muslim population in a war.

However, even though this category no longer exists, it is educative to consider the significance of the term used by the Qur'an and the Prophet (PBUH) for it. Ahl al-dhimma may be translated into English as "guaranteed citizens," i.e. citizens whose protection and whose defence is to be guaranteed by the Muslims, the citizenry as well as the state. This guarantee is to be issued on behalf of Allah and His Messenger.

The Prophet (PBUH) was extremely sensitive about fulfilling this commitment or pledge as extended to non-Muslims. This commitment is considered to have been made, not by individuals or rulers, but the Qur'an and by the model examples of the Prophet (PBUH).

There are several examples of Muslims entering into contracts or agreements with non-Muslims. Although all such contracts have normative value, two are highly significant and have been the subject of long discussions amongst Muslim jurists. One is the Charter of Madina, mentioned above, and the other is the agreement prepared by the Prophet (PBUH) in relation to the people of Najran, a province with a sizeable Christian population that was situated near the southwestern border of Saudi Arabia and present-day Yemen. In this contract or charter, the Prophet (PBUH) guaranteed basic freedoms to the non-Muslim tribes of Najran, undertaking that: (i) Whatever their earlier habits or practices had been, they would never be changed; (ii) Whatever their rights and privileges, these would never be subject to change; and (iii) Their religious matters would continue to be run as they were.

This document, which is not very long, has also come down to us and is available in English, French, Urdu and Turkish translations.[5] Along with other similar instruments, including those prepared by the immediate successors of the Prophet (PBUH), it provides the basis for the resolution of conflicts of laws as conceived by Muslim jurists, who later developed the principles of what may be termed as the private international law of Islam.

A dictum phrased by the fourth Caliph Ali ibn Abi Talib has already been quoted. He has been reported by some of the leading jurists of Islam to have said that the rights and obligations of non-Muslim co-citizens are similar to the Muslims' own rights and obligations.[6]

There has been a general principle, which has enjoys unanimity amongst the Muslim jurists, that a privilege or a right once granted to a non-Muslim can never be withdrawn or changed to his disadvantage. A state can change a constitution; it can change its law. It can even modify the Islamic laws based on ijtihād or the exercise of independent judgment. But once a privilege is guaranteed to a non-Muslim, it cannot be withdrawn. There are examples in Muslim history where a privilege was conceded to a non-Muslim and it continued to be preserved and protected by Muslim rulers for six or seven centuries.

A recent authority on Muslim international law has compared the status of Muslim citizens of the Islamic State with that of non-Muslims. He has concluded that, in several respects, non-Muslims are better off than their Muslim compatriots. For example, zakat is compulsory and has to be paid by Muslims in all situations. Under no situation can this be exempted or relaxed. However, a non-Muslim, who does not pay zakat, can always be exempted from the payment of jizya, a tax parallel to zakat that is to be paid by non-Muslims. Likewise, a Muslim cannot be exempted if compulsory conscription or military training is undertaken in any Islamic state; however, a non-Muslim is exempted, although he is welcome to participate voluntarily.[7]

Another privilege granted by the Prophet (PBUH) to some non-Muslim tribes is also significant. They were assured that no Muslim would be appointed to head them or to lead them if they felt that their own people should be appointed as state representatives to administer their matters. Such a right was granted through agreements. A similar privilege was given by the Prophet (PBUH) to a tribe living in present-day Taif. After the conquest of Makka, Taif became a part of the Muslim territory. Even then this privilege was allowed.

The personal law of non-Muslims has always been protected by the Islamic state.[8] This right is recognized even in those matters where Islamic law does not approve a practice as valid or morally justified. For example, some of the non-Muslims observed habits and practices that are not only prohibited in Islam, but may be repugnant to most human societies. One such example is the practice of satti, which was the practice of the Hindus since before Muslim rule in India, and which is still followed in some parts of the country today. According to this religious practice, if a husband dies leaving a widow, the better recourse for her is to burn herself alive rather than continue to survive him. During Muslim rule in India, although Muslim scholars and jurists tried to persuade the Hindus to abandon this practice, the Muslim government never intervened and never prevented it by law or

force.

Likewise, when the areas of present day Iran became part of the Islamic caliphate, there were many people who saw no harm in incestuous practices and who permitted marriage within degrees of relationship that are prohibited in Islam and in many other divine religions. However, the Muslim rulers did not interfere with this practice and the non-Muslim Iranians continued to observe it. It is believed that, among the very small minority of fire-worshippers in Iran, this practice persists even today. Even smaller minorities of this community are found in Pakistan and India today. However, this practice has never been interfered with by Muslim rulers. This shows the extent to which the personal law of non-Muslims is recognized in different Muslim countries.

The status of a non-Muslim in a Muslim society has been summed up by a Muslim jurist in the following words: "Non-Muslims are like Muslims as far as the civil matters and the dealings of this world are concerned."[9] Thus, whatever is allowed to a Muslim with respect to his property and wealth is allowed to a non-Muslim; whatever is not allowed to a Muslim in this respect is not allowed to a non-Muslim either.

If we compare the Islamic tradition of tolerance and accommodation with the practice being meted out to Muslims in different ‘civilized' countries in respect of their personal law, we find a world of difference. It is painful to observe that the personal law of Islam is denied to Muslims in many modern and ‘democratic' countries. In some countries, there are constitutional provisions that do not allow Muslims to organize their personal matters, marriages, and other familial matters in accordance with the teachings of the Qur'an. The treatment of Muslim minorities in non-Muslim countries is discussed in more detail in the following section.

(III)

Today, the population of Muslims living in a non-Muslim environment is growing. Of the approximately 1,400 million Muslims in the world, 35-40 percent live outside the Muslim world. This is not a new phenomenon. There have been Muslim minorities living in different non-Muslim countries from the very beginning. One of the earliest examples is that of Ethiopia. As is known to students of sīra (life of Prophet Muhammad pbuh) during the early years of Islam, when the Muslims of Makka were being severely persecuted, the Prophet (PBUH) advised those of his followers who were worst afflicted to migrate to Ethiopia. He told them that the country was ruled by a pious ruler in whose realm they would not be wronged because nobody was wronged there. Upon this advice, a number of companions migrated to and settled in Ethiopia.

The Prophet (PBUH) had also advised these followers to eschew any hostilities with the Ethiopians (or "habashis"). His instruction, reported by several compilers of the Hadith, was: "Leave alone Ethiopians as long as they leave you alone."[10] This meant they were to adopt a neutral policy towards the Ethiopians, never interfere in their matters, never attack them, and never enter into any hostile relationship with them.

These migrants lived peacefully in Ethiopia and their descendants are found there today, even though Ethiopia has never been a part of the Muslim world or of any Islamic state, and is not an Islamic state.

The advice of the Prophet (PBUH) was honored not only by the immigrants but by Muslim rulers in the region, and continues to be honored even today. We do not find any example in the entire Muslim history where any ruler from Egypt, Sudan or from other adjoining countries has entered into any kind of hostility with the rulers of Ethiopia, despite several instances where Muslims have been bitterly persecuted there, such as in the days of Helaslasi.

The Muslim minorities can be divided into three categories:[11]

(i) Muslim minorities that represent earlier Muslim kingdoms and free regions which were later

either occupied or annexed by neighboring non-Muslim powers. The Muslims in South Philippines (Mindanao) once had their own kingdom. They were later annexed by a neighboring non-Muslim power. The Muslims in India and in some regions of Eastern Europe are similar examples of Muslim populations that were subjected to various non-Muslim rules during the course of history. Such Muslim minorities are numerically the largest.

This is the first category of Muslim minorities. This is perhaps the most problematic category of Muslim minorities. The main problem faced by these Muslims is the preservation of their Islamic identity. They see themselves not as minorities but as distinct nations, and feel that their ultimate destiny should be decided on the basis of this fact. The ultimate solution to the problem remains to be seen.

(ii) The second category of Muslims minorities includes immigrants who went to non-Muslim countries, mostly in Europe and North America, for economic attractions or other reasons and stayed behind. A large number of such immigrants were once students pursuing higher studies in these countries who did not return to their respective countries. They now constitute a large proportion of Muslim minorities and number in millions.

This category of Muslim minorities is mostly docile, submissive and peaceful. By and large, these Muslims have not created any difficulty or problem for their host countries.

(iii) The third category is that of new Muslim converts who have accepted Islam in different parts of the world. Their main problem is the acquisition and preservation of an Islamic identity. Educating and raising their children in accordance with Islamic norms and traditions poses the most formidable challenge to them. In many cases, the Islamic identity has been denied to them. In some cases, this identity is not formally denied to them, but the environment makes it difficult for them to achieve and maintain it.

An important issue confronting Muslim minorities in non-Muslim countries is the misunderstanding that they are bound to implement the shari`a in exactly the same way in their lives as Muslims living in Muslim countries. This misunderstanding, which imposes an unnecessary conflict between the shari`a and the norms and laws of the host country, is created by some less educated or overenthusiastic Islamic activists as well as some non-Muslims observers who are not fully aware of the demands of Islam from various categories of its followers.

In fact, the demand of Islam from an individual living in a Muslim society is different from that of an individual living in a non-Muslim environment. Likewise, the extent to which Muslims have political freedom and independence in their own government also determines the precise obligations posed on them by Islam.[12]

Clearly, if the demands of different contexts and situations were mixed up and everybody had to follow precisely the same code, confusion and difficulty would ensue. The idea that Islamic demands can change with altered conditions does not represent a compromise but is rooted in certain principles evident from the Qur'an itself. There are certain instructions given in the Qur'an that require Muslims to do things under certain preconditions: if the preconditions are present, the requirement is valid; if the pre-conditions are not present, the requirement does not apply. For example, if a person maintains a certain amount of saving for a full year, he is under obligation to pay the zakat - an obligatory tax - on it at 2.5 percent. Now, zakat is one of the key pillars of Islam, and is to be recognized as such by every Muslim. However, it is to be practiced only by those who meet the precondition outlined above. Thus, if a Muslim is poor and has not maintained savings free of all needs and encumbrances for a year, the obligation of zakat is not applicable to him. This exemption does not mean that the requirement of Islam has changed or an Islamic principle has been compromised. Simply, since the precondition is not present, the individual is not liable to meet the obligation.

In the same manner, the Almighty has directed that Muslims perform certain duties "if We give the believers authority in the land." Thus, having governing authority is a precondition for these duties. A

Muslim minority would not be required to implement some of the Islamic instructions being applied in Madina. In Madina, the penal code of Islam was applied. But implementing this code was never required of the Ethiopian Muslim minority during the days of the Prophet (PBUH), or the tiny Indian Muslim minority during the days of the second Caliph, or the Spanish Muslim Community during the days of the third Caliph. This clearly shows that the requirements posed by Islam vary with the situation and context, and that in some respects different rules apply to Muslims living in non-Muslim countries from Muslims in Muslim lands.

Moreover, there are rules in Islamic law and principles of Islamic jurisprudence to be implemented only by the imam or the Muslim state and Muslim government. These rules and principles constitute an important part of the Shari'ah and are not required to be implemented by the individual. This distinction has to be made known to young Muslim men and women living in non-Muslim environments. It needs to be emphasized that individuals are under an obligation to perform only those duties and functions that are required to be implemented by the individual.[13] This point also has to be taught to the uneducated as well as to those non-Muslim well-wishers and observers who are not fully aware of the requirements of Islam.

It is a matter of concern in Europe and the United States today that Muslims living there might start implementing the hudood laws; what would be the solution then? The answer is simply that the Qur'an does not require of Muslims in the United States, or for that matter in any other non-Muslim environment, to implement the hudood because individuals are not required to implement the penal code of Islam. This is a requirement of the Muslim state. Only men in authority have the obligation to implement such laws. Indeed, Hudood laws and other penal requirements are never to be implemented by individuals, whether they live in a Muslim country or in a non-Muslim environment.`

Thus, many of the difficulties faced by Muslim minorities and their non-Muslim hosts are due to confusion and misunderstanding regarding which Islamic requirements apply to the Muslim individuals living in a non-Muslim environment. Understanding that many of the Islamic requirements depend on the context and situation of the individual can help alleviate such issues.

(IV)

Non-Muslims in Pakistan have been living peacefully without facing any difficulty or problem at the social or political level. They have been given rights and guarantees that are protected in the Constitution of Pakistan. The founder of the country, the Quaid-e-Azam Mohammad Ali Jinnah, repeatedly assured the non-Muslims in Pakistan, and is on record to have said, that they would have equal rights and privileges as their Muslim co-citizens as granted to them by the shari'a. This assurance was in conformity with the above-cited Islamic principle expressed by the fourth caliph, Ali ibn Abi Talib.

Both before the creation of Pakistan and immediately afterwards, the Quaid assured non-Muslims that they would have full freedom of worship and could continue to practice their religions as before. They were to be as independent and equal as the rest of the citizens of Pakistan. In his address to the first Constitutional Assembly of Pakistan on August 11, 1947, he said: "You are free to go to your temples, you are free to go to your mosques, you are free to go to any place of worship. There will be no discrimination on the basis of religion. In Pakistan all citizens will be alike and there will be no differentiation on the basis of religion as far as citizenship is concerned and their rights and privileges as Pakistanis are concerned."

A few days after making this statement, the Quaid called a press conference in which he further clarified this commitment because this part of his statement before the Assembly had been misquoted several times; in fact, it has since then often been quoted out of context. The Quaid had himself realized and anticipated that this part of his statement might be misunderstood. Therefore, he explained his statement by reiterating that non-Muslims of Pakistan would have those rights that had been given to them by Islam. They would be equally treated and their rights and privileges will be fully

guaranteed.

Soon after the Quaid's demise, the founding fathers of this country, the members of the First Constituent Assembly, adopted a resolution known as the "Objectives Resolution." The Objectives Resolution is one of the most important documents in Muslim constitutional history in the twentieth century. It combines, for the first time, the dictates of Islam and the principles of Islamic constitutional theory, the basic elements of Islamic political philosophy, and the dictates and requirements of the modern democratic representative system. All of these have been equitably integrated and beautifully interwoven into each other. This important document has been adopted in all constitutional drafts in Pakistan and now constitutes an operative part of the Constitution of Pakistan through Article 2-A. About minorities, it says that they shall have full freedom to practice their religion, to promote their culture, to promote their languages and to exercise all such rights as are available to other citizens.

This was the first constitutional guarantee given to the minorities in Pakistan. Further guarantees are provided in the constitution, which deals with fundamental rights, clearly says that these rights will be guaranteed to each and every citizen, irrespective of cast, creed and culture.

Then, Part 12 of the constitution, where Islamic provisions have been made, and where it has been said that all laws shall be brought into conformity with the Qur'an and Sunnah and no law shall be enacted which is repugnant to the Qur'an and Sunnah, it has been said that this provision will not have effect on the status and privileges of the non-Muslims and their personal status as citizens of Pakistan. This provision has been added even to Article 227 of the constitution where the constitutional commitment to enforce Islamic laws has been made.

Therefore, the minorities in Pakistan, among whom the Christians constitute the largest, followed by the Hindus, have always enjoyed freedom, respect and privilege in the country. A Christian jurist rose to the highest judicial office in the country, the Chief Justice of Pakistan, and remains a most widely respected figure in the history of the country's superior courts.

Likewise, one of the justices of the present Supreme Court is a Hindu[14], who is one of the most widely respected and honored judges in the history of the Supreme Court.

There have been many other non-Muslim judges in Pakistan as well who have enjoyed the highest respect because of their competence and also because of their upright and principled stance on different issues.

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[1] The rights and privileges of minorities have become an important component of modern international law; see, for example, Shaw 1997, 218-223. (For more references, see ibid., 218fn., 139, 141, etc.)

[2] See, among others, Hamidullah 1987, 111-118.

[3] Bukhari, Al-Jami as-Sahih, "Kitab al-Jauā'iz": no. 50.

[4] Hamidullah 1986.

[5] For a complete text, see Abu Ubaid n.d., 188.

[6] This statement has been quoted by several authorities. See, among others, Marghinani; and Ibn al-Human n.d., 197.

[7] Hamidullah 1987, 112.

[8] See chapters on "Ankihah Ahl al-dhimma" in the major fiqh compendia.

[9] Sarakhsi 1957, 306.

[10] Abu Daud, Kitab as-Sunan, "Kitab al-Malahim": nos. 8 and 11.

[11] See, for more details, Ghazi 2007, 483-521.

[12] Ibid.

[13] Ibid., 38-40, 46-47, 511-515.

[14] Justice Bagwan Das, now retired.

Source: http://www.ips.org.pk/international-relation/the-muslim-world/1201-mahmood-ahmad-ghazi.html